



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-238 (Sales of watercraft to nonresidents)**

Date last adopted/issued: **December 2, 2000**

Reviewer: **Sue Goldstein**

Date review completed: **August 25, 2003**

Briefly explain the subject matter of the document(s):

Rule 238 implements RCW 82.08.0266 and 82.08.02665. It explains the retail sales tax exemption for sales to nonresidents for watercraft requiring United States Coast Guard documentation or state registration under RCW 82.08.0266 and the exemption for sales of watercraft to residents of foreign countries under RCW 82.08.02665.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget



		levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)
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Please explain.

The rule explains the retail sales tax exemptions for sales of watercraft to residents of other states and of foreign countries under RCW 82.08.0266 and 82.08.2665, respectively. Those statutes provide the exclusive authority for granting a retail sales tax exemption for sales of such watercraft when delivery is made in Washington. For retail sales and use tax exemptions relating to watercraft to be used in interstate or foreign commerce or outside the territorial waters of the state, see RCW 82.08.0262 and 82.12.0254.

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	X	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.



4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
	X	Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

The reference to RCW 84.08.065 at the end of subsection (1) with regard to property tax liability for purchasers of commercial vessels should be to RCW 84.40.065.

There appears to be a missing word in subsection (3)(b)(iii) in the second sentence. The word "same" should be inserted after "substantially the" and before "information."

Fast Fax is accessed through the 800 number only, so the reference to (360)786-6116 should be deleted.

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If "no," identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.

RCW 82.32.300 authorizes the Department of Revenue to make and publish rules. The Department is also granted rule-making authority by RCW 82.01.060(2).

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
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	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?
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Please explain.

The Department has exclusive authority for administering the retail sales and use taxes in this area. The Department has coordinated the administration of the use tax exemption available to nonresidents temporarily bringing watercraft in Washington (RCW 82.12.0251) with the registration guidelines administered by the Department of Licensing.

RCW 88.02.030 requires that a nonresident bringing a vessel into Washington for repair file an affidavit with the Department of Revenue if those repairs cannot be made in 60 days. Rule 238 explains that this affidavit will also be accepted for the purpose of use tax exemption.

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

This is an interpretive rule that imposes no new or additional administrative burdens on taxpayers that is not already imposed by law.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

The information in Rule 238 applies equally to all similarly situated taxpayers.

9. LISTING OF DOCUMENTS REVIEWED: Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).



Statute(s) Implemented: **The following statutes are implemented to the extent they apply to retail sales and use tax with regard to sales of watercraft to nonresidents and residents of foreign countries when delivery is made within Washington.**

- RCW 82.04.040—"Sale," "casual sale";
- RCW 82.04.050—"Sale at retail," "retail sale";
- RCW 82.04.070—"Gross proceeds of sales";
- RCW 82.04.080—"Gross income of the business";
- RCW 82.04.190—"Consumer";
- RCW 82.04.220—Business and occupation tax imposed;
- RCW 82.04.240—Tax on manufacturers;
- RCW 82.04.250—Tax on retailers;
- RCW 82.04.270—Tax on wholesalers, distributors;
- RCW 82.04.440—Persons taxable on multiple activities—Credit;
- RCW 82.08.010 (Definitions);
- RCW 82.08.020 (Tax imposed--Retail sales--Retail car rental);
- RCW 82.08.0266 (Exemptions -- Sales of watercraft to nonresidents for use outside the state); and
- RCW 82.08.02665 (Exemptions -- Sales of watercraft, vessels to residents of foreign countries).
- RCW 82.12.020—Use tax imposed;
- RCW 82.12.0251—Exemptions—Use by nonresident while temporarily within Washington of tangible personal property brought into Washington . . .;
- RCW 82.12.035—Credit for retail sales or use taxes paid to other jurisdictions with respect to property used.

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs): **None**

Court Decisions: **None**

Board of Tax Appeals Decisions (BTAs): **None**

Appeal Division Decisions (WTDs):

- **21 WTD 21 (2002). N/A - In accordance with RCW 82.12.020 and Rule 238, foreign corporation did not qualify for a waiver or cancellation of delinquent penalty resulting from a use tax assessment.**

Attorney General Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Chapter 82.49 RCW (Watercraft excise tax);**
- **RCW 84.40.065 (Listing of taxable ships and vessels with department -- Assessment -- Rights of review); and**
- **RCW 88.02.030 (Exceptions from vessel registration -- Use of excess document identification fee for boating safety programs -- Rules).**



10. Review Recommendation:

- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

This rule should be revised to correct the citation to erroneous (nonexistent) RCW, correct the phone number for faxing, and to include a missing word. This is a candidate for the expedited rule making process.

11. Manager action: Date: 8/26/03

AL Reviewed and accepted recommendation

Amendment priority:

- ☐ 1
☐ 2
☐ 3
☒ 4